IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) Writ Petition No. 108 of 2004 (M/B)

1. M/s Usha Breco Ltd., through its G.M.
   Lt. Col. Rakesh Sharma (Retd.)
   having its registered office at 701,
   Surya Kiran Building, Kasturba Gandhi Marg,
   New Delhi 110001
2. Sachin Baweja S/o Sri R.N. Baweja,
   B-221, Sector 55, Noida (UP)

... Petitioners

Versus

1. State of Uttaranchal through its Chief Secretary,
   Sachivalya, Dehradun
2. Nagal Palika Parishad Hardwar, through its Executive Officer, Hardwar, Uttaranchal

... Respondents

(2) Writ Petition No. 82 of 2004 (M/B)

1. M/s Usha Breco Ltd., through its G.M.
   Lt. Col. Rakesh Sharma (Retd.)
   having its registered office at 701,
   Surya Kiran Building, Kasturba Gandhi Marg,
   New Delhi 110001
2. Sachin Baweja S/o Sri R.N. Baweja,
   B-221, Sector 55, Noida (UP)

... Petitioners

Versus

1. State of Uttaranchal through its Chief Secretary, Sachivalya, Dehradun
2. Nagar Palika Parishad Hardwar, through its Executive Officer, Hardwar, Uttaranchal

... Respondents

Sri Pradip Bakshi, Advocate, for the petitioners
Sri K.P. Upadhyaya, learned standing counsel for Respondent No. 1
Sri S.Dhulia, Senior Advocate assisted by Sri Pankaj Miglani, learned counsel for Respondent No.2

Dated: April 22, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

The petitioner No.1 is a public limited company duly incorporated under the provisions of the Companies Act, 1956. Lt. Col. Rakesh Sharma (Retd.) is its General Manager and has also been duly authorized by petitioner No.1-company vide Special Power of Attorney to institute the present writ petition. The present writ petition has been filed seeking the following reliefs:-

A. To issue writ order or direction in the nature of certiorari quashing the impugned order dated 04.02.2004 (Annexure No. 16) being illegal, arbitary, malifide, without jurisdiction and authority and violative of principles of natural justice of this Court's order dated 04.02.2004.

B. To issue writ order or direction in the nature of mandamus restraining the respondents more particularly Respondent No.2 from taking any further action on the basis of and/or pursuant to the impugned order dated 04.02.2004.

C. To issue writ order or direction in the nature of mandamus directing the respondents not to interfere in any manner and/or obstruct the operating of the Ropeway of the petitioner at Mansa Devi Temple, Hardwar and

D. To issue writ order or direction as may be deemed fit and proper in the facts and circumstances of the case. AND

E. Award costs of the writ petition to the petitioner.

2. On May 15, 1974, an agreement was entered into between Petitioner No.1 and Respondent No.2, whereby the petitioner No.1 agreed to design, erect,

install not operate a Cabinride Aerial Ropeway for transporting devotees/visitors to the Goddess Mansa Devi Temple on Built, Operate and Transfer basis. In terms of the agreement between the parties, petitioner No.1 was to construct and operate the ropeway at its own cost and for the said purpose, Respondent No.2 was to provide land to Petitioner No.1 for the setting up of the ropeway for which the petitioner No.1 was to pay annual lease rent as agreed in the agreement. The agreement was for a period of 30 years from the date of its commercial operation with an option to the petitioners to renew the same at mutually agreed terms for another ten years thereafter. The fare to be charged by the petitioner No.1 from the passengers using the ropeway was fixed. In the agreement clause, the Petitioner No.1 was authorized to increase the fare from time to time after seeking the approval of Respondent No.2. The Ropeway started functioning from May 21, 1981. In the writ petition, the petitioners have narrated the facts relating to increase of fare made by the petitioner No.1 and dispute relating thereto and have also referred that the matter went up to the High Court and the High Court directed the Divisional Commissioner to decide the dispute between the parties and the Commissioner directed Respondent No.2 to reconsider the matter of increase in the fare after providing an opportunity for hearing to the petitioners and further for constituting a committee by respondents to determine the norms for increase in the fare in future.

3. According to the petitioners, after the order passed by the Divisional Commissioner, Meerut, several meetings took place between the respondents/petitioners to resolve the controversy of fixing the rates and norms for future increase in fare for the Ropeway resulting into a Memorandum of Understanding being entered into

between Petitioner No.1 and Respondent No.2 which was signed on 12.12.1996. It has been stated by the petitioners in the petition that the said Memorandum of Understanding had approved by State of Uttar Pradesh vide its Government Order dated 06.01.1997, which is contained in Annexure No.5 to the writ petition. In fact this G.O. is a letter written by the Special Secretary, U.P. Government to the District Magistrate, Hardwar a copy of which was sent to the Chairman, Municipal Board, Hardwar.

4. A perusal of the said Government Order reveals that the Sate had no objection relating to Memorandum of Understanding (MOU). It does not reveal that the State Government had approved the said Memorandum of Understanding in exercise of its powers under the Municipalities Act. Pursuant to the aforesaid Memorandum of Understanding and the order of Respondent No.1 in this regard, Petitioner No.1 and Respondent No.2 entered into a Supplementary Agreement incorporating the terms of the MOU therein. This Supplementary Affidavit was executed on 16.01.1997 between the parties which is contained in Annexure No.6 to the writ petition. By this Supplementary Agreement, Clause No.9 of the Principal Agreement was substituted as under:-

> *"The LESSEE will operate and maintain the said Aerial Passenger Ropeway as a Commercial Organization and henceforth charge a fare of Rs.18 (Rupees Eighteen Only) exclusive of Local, State or Central Taxes or Duties, etc. (it applicable, shall be charged extra) per passenger and will not increase this fare for one year from the date of this Agreement with an option to increase the fare upto Rs.20 after*

this period without the approval of the LESSOR. ***Subsequent to this, the LESSEE will have the option to increase the fare upto 25% of the prevailing fare every Two years without the approval fo the Lessor. Any increase in the fare more than 25% of the prevailing fare or within Two years of the previous increase, will be subject to the approval fo the Lessor whose final decision will be communicated to the LESSEE within 90 days from the date of request made by the Lessee."***

5. It is because of this clause, the petitioners continued to increase 25% of fare after every two years. The fare was to be charged from the visitors/devotees to temple and accordingly the lease rent payable to Respondent No.2 was also proportionally increased. The last increase was made on 16.01.2002. By this increase in fare-dated 16.01.2002, the fare was increased upto Rs.39/- and lease rent was also increased to Rs.21.70 lacs per year to Rs.17.36 lacs. It is on the basis of these facts that the petitioner has challenged the impugned order dated 04.02.2004 on the ground that increase was made as per Clause (9) of the amended agreement clause and the Executive officer, Nagar Palika illegally required the petitioner to withdraw the increase in the fare w.e.f. 16.01.2004 and hence it has been prayed for quashing of the same and further prayed that in view of the substituted clause (9), the Municipal Board may be restrained from taking any action in pursuant to the impugned order dated 04.02.2004 and further writ has been prayed directing the respondents not to interfere in any manner and/or obstruct the operating of the Ropeway of the Petitioner at Mansa Devi Temple, Hardwar.

6. A counter affidavit has been filed in which the respondents have taken the pleas regarding the maintainability of the writ petition. First plea which ahs been taken in the counter affidavit is that the petitioners have an alternative remedy by way of filing a suit, secondly in view of clause 14 of the agreement dated 15.05.1994, i.e. the Principal Agreement which provides for settlement of dispute between the parties, if any, by the Arbitrator and in case of dispute, this Arbitration clause may be invoked. On the merit of the writ petition, it has been stated by the respondents as under:-

> **(f) That on 15.5.1974 an agreement (Principal Agreement) was entered into between the petitioner as well as respondent no. 2 with regard to the establishment of the rope-way at Haridwar for the visitors and devotees to travel to the temple of Godess Mansa Devi which is on hilltop. In the agreement there was clause 9 wherein it was agreed that initially petitioner no. 1 would charge a fare of Rs. 2/- exclusive of Local, State or Central taxes or duties etc. per passenger for return journey with the option to increase or decrease the fare as it may be decided appropriate from time to time. The fare was fixed on the prevailing prices as on 6th August 1973 of raw material, machinery, wire rope, spares and stores, power, wages and salary costs, duties, levies, taxes etc. It was also agreed that if there is any increase in the costs / prices of those items or any of them, the fare shall be correspondingly increase subject to the approval of the answering respondent i.e. Nagar Palika Parishad, Haridwar.**
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> **(g) That thereafter in the year 1981 when the ropeway started, the fare was fixed at Rs. 3 after duly considering the necessary facts as per clause 9 of the agreement dated 15.5.1974. Thereafter the fare was increased from time to time and on 3.4.1995 the rate of Rs. 13/- per passenger for to and fro journey was approved by respondent no. 2. On 17.10.1995 the petitioner company has demanded for the rise in its fare to Rs. 20 instead of Rs. 13 and keeping aside the terms as were provided in clause 9 of the original agreement, they had**

raised the fare to Rs. 20/- per passenger w.e.f. 15.11.1995. Thereafter the public raised an outcry and there were a great public resentment against this arbitrary increase as it was felt that the petitioner is unduly exploiting his monopolistic position. Consequently the then Board has resolved in its meeting dated 29.12.1995 that the petitioner company shall charge only Rs. 13/- per passenger for to and fro journey.

(h) That thereafter again a demand of increasing the fare was made by the petitioner and as such on 16.1.1996 a committee was constituted by respondent no. 2 to consider the rise in fare. The aforesaid constituted committee held its meeting on 19.1.1996 and had given its report dated 29.1.1996 wherein it was concluded that if the petitioner company agrees to pay Rs. 8 Lacks as lease lease rent to respondent no. 2 then increase in fare to the tune of Rs. 20/- per passenger can be considered. It was further concluded that if there will be any increase in fare in future, there will be proportional increase in the lease rent also and for that the then chairman was given the powers to enter into an agreement with the petitioner company.

(i) That the board in its meeting dated 7.2.1996 had passed the report of the aforesaid committee and had thus resolved the matter accordingly.

(j) That pursuant to the resolution dated 7.2.1996, the then Chairman had entered into the alleged memorandum of understanding dated 12.12.1996 and thereafter into the alleged supplementary agreement dated 16.1.1997. It is pertinent to mention here that no power was given to the then chairman to enter into an agreement in violation to the letter and spirit of the Principal Agreement. What has happened is that unilateral powers have been given to the petitioner to raise the fare and the same is totally against the public policy. There was no resolution to that effect and as such the alleged memorandum of understanding dated 12.12.1996 as well as the alleged Supplementary Agreement dated 16.1.1997 were entered by the then chairman in excess of his powers and as such the same is illegal and has no binding force upon respondent no. 2 and further the same is also against the interest of the public at large. Thus the present Board in its extraordinary meeting dated 3.2.2004 had resolved to cancel the alleged Supplementary Agreement dated 16.1.1997. The impugned letter is only a

communication of Board's resolution dated 3.2.2004. It is worth mentioning here that it was well within the knowledge of the petitioner company that the board board's meeting is going to be held on 3.2.2004 and there is an agenda of the cancellation of illegal Supplementary Agreement entered into by the then Chairman with the petitioner no. 1 company.

7. We have heard learned counsel for the parties and perused the entire evidence on record.

8. By the impugned order, the Executive officer, Nagar Palika Parishad, Hardwar has informed the petitioners that Supplementary Agreement entered between the petitioners and the then President Nagar Palika, Parishad has been cancelled in the public interest by the Board vide its Resolution No.203 dated 03.02.2004.

9. The petitioners have not challenged the cancellation of Supplementary Agreement vide Resolution No.203 dated 03.02.2004, as is evident from the prayers quoted above. The Resolution by which agreement dated 03.02.2004 was cancelled, has been passed in accordance with provisions of U.P. Municipalities Act as applicable in State of Uttaranchal. The Resolution is in fact in the public interest which comes out from the fact that in the Principal Agreement, the increase was allowed only after the approval of the Board but in the Supplementary Agreement and by substitution, the clause (9) of the original agreement was amended and power was given to the petitioners unilaterally and they were free to increase the fare up to 25% without approval of the Board after every two years. While determining the fare of the Ropeway by which the visitors/devotees go to have a *Darshan* of Goddess Mansa Devi, it has to be

considered that the visitors visiting to the temple are large in number and the Municipality being the local Government which also has the responsibility to watch and guard the interest of the visitors in regulating the increase in fare. This factor necessarily have to be taken into account otherwise 25% increase in fare after every two years by the petitioners will cause heavy financial burden on the visitors. It is settled law that the larger public interest should prevail over the individual's interest.

10. In the counter affidavit, it has specifically been stated that then Chairman and Executive Officer without any resolution of the Board authorized the petitioners to enter into such agreement dated 03.02.2004. By inserting such clause, a monopoly has been created in favour of the petitioners relating to increase in fare after every two years. It is for these reasons the supplementary agreement dated 03.02.2004 has been cancelled by Resolution of Board.

11. The Minutes of the meeting is on record, a perusal of which does not show any resolution by which the President has been authorized to enter into supplementary agreement with the petitioners.

12. By the impugned order, the Executive Officer has informed the petitioners regarding the cancellation of the supplementary affidavit and has required the petitioners to withdraw the order dated 16.01.2004 by which the 25% increase in the fare was made as after the cancellation of the supplementary agreement, as the petitioners did not have any power to increase the fare after cancellation of supplementary agreement. We may at the cost of the repetition reiterate that the Board's Resolution No.203 dated 03.02.2004 by which the

supplementary affidavit has been cancelled is not under challenge.

13. Thus, the impugned order has rightly been issued by the Executive Officer and does not suffer from any illegality or infirmity.

14. In **Writ Petition No.82 of 2004,** the petitioner has challenged the notice/order dated 17.01.2004 (Annexure No.9) issued by the Executive Officer, Nagar Palika requiring the petitioners to withdraw the increase in fare of Ropeway.

15. The fare has been increased without approval of the Municipal Board as noticed in the Writ Petition No.108 of 2004 (M/B) (**Supra).** After cancellation of the supplementary agreement vide Resolution No.203 dated 03.02.2004, the Executive Officer, Nagar Palika was fully competent and justified in issuing the notice and hence the notice impugned cannot be said to be without jurisdiction.

16. In view of the above, both the writ petitions are devoid of merit and are dismissed accordingly. The petitioners shall give account to the Municipal Board about the fare charged by them without approval of the Municipal Board and the Municipal Board may take necessary steps for realizing the same.

17. Learned counsel for the petitioner at the last prayed for the leave to appeal before the Hon'ble Supreme Court. We do not find any substantial question of law which has been decided by this judgment. The judgment is purely on facts, therefore, the leave to appeal is refused.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang